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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/651,042	08/30/2000	Timothy James Blenke	29579/KC15929	2360

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EXAMINER
COLE, ELIZABETH M

ART UNIT	PAPER NUMBER
1771	9

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Please find below and/or attached an Office communication concerning this application or proceeding.

mk-8

Office Action Summary	Application No. 09/651,042	Applicant(s) BLENKE ET AL.	
	Examiner Elizabeth M Cole	Art Unit 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *15 October 2002* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-77* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-77* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

1. The terminal disclaimer filed on 1/15/02 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of 09/651,041 has been reviewed and is accepted. The terminal disclaimer has been recorded.

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the bond element contact lengths must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

3. Response to argument:

In response to this objection, Applicant has indicated that element 84 in figure 4 refers to the bond element contact length. However, element 84 refers to the "equally spaced imaginary increment lines". If "equally spaced imaginary increment lines" are the same as "bond element contact lengths" then they should be called "bond element contact lengths". The description of figure 4 at page 21 also states that the "composite contact length" is defined as the sum of the line lengths along the widths of the bond elements traversed by a given imaginary increment line 84. But, it is not seen where the specification states that element 84 denotes the "bond element contact lengths". The use of different names for elements which are the same is improper. Therefore, this objection has been maintained.

4. Claims 1-77 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification does not teach how to make/use the claimed invention because it does not disclose the structure of the stress receptor, transfer, dissipation and termination elements, does not define the amount, direction or type of stress which is applied to the composite material, and therefore does not disclose how to make/use the claimed invention. The specification states what the elements do but it does not teach what the elements do in response to a specific stress and it does not teach the structure of the elements or of the bonded material.

5. **Response to Arguments, 112 1st Rejection:**

6. In response to this rejection Applicant asserts that the specification does indeed teach how to make/use the claimed invention as shown in the specification. In particular, Applicant points out that page 18 teaches how to make the bonds and that the bond elements unite the sheets. That the bond elements unite the sheets is not in question. But, what the specification fails to disclose is how to make "the bonds". The disclosure at page 18, lines 7-24 teaches how to form thermal bonds, or adhesive bonds. However, the specification does not teach how to make a stress receptor element so that it is a stress receptor element and not, for example, a transfer and dissipation element. The examiner fully agrees that making a bond element which unites two layers of flexible is enabled by the specification, and also that such bond elements are well known and conventional in the art. However, what the specification does not do is enable one of

ordinary skill in the art to make particular bond elements claimed. The particular bond elements claimed have been given names which denote what they do in response to any conceivable force which could be applied to the bonded composite material, whether the force is one which attempts to peel the two layers apart, stretch the layers lengthwise, stretch the layers widthwise, compress the layers, etc. No matter what force is applied, the elements must function as stress receptors or stress transfer and dissipation elements, even though the position of the elements relative to the force applied would be different in each of these instances. That is what is being claimed, but that is not what is enabled the specification. Applicant asserts that the "the stress is not the invention" and that "the invention is in a bonded composite of at least first and second flexible sheet materials". However, it is the examiner's position that when the bond pattern which bonds the bonded composite together is described in terms of how it interacts with a stress which is applied to it, the stress is indeed a critical part of the invention. The stress is not defined in the specification. Therefore, the invention is not enabled. Therefore, this rejection has been maintained.

7. Claims 35 and 41 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification does not describe element 84 as indicating "bond element contact lengths" in the drawings.

8. Claims 1-76 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

9. In claim 1, the recitation that the bond pattern length and the side edges define a third area of the bond pattern renders the claim indefinite, because it implies that two other areas of the bond pattern have been defined. It appears that applicant is intending to claim a third area, wherein the first and second areas are the areas of the flexible sheets set forth in elements (a) and (b) of the claim. If so, the claim could be amended to remove the "of the bond pattern" language at the top of page 33 of the marked up copy of the claims, in order to overcome this part of the rejection.

10. Also, the overall structure being claimed is not clear. How do the stress receptor elements, the transfer and dissipation elements differ structurally from each other? Is it where they are located within the bond pattern or do they differ in a structural way, such as size, depth, shape, etc.? It is not clear whether the stress receptor, transfer and dissipation elements differ from each other structurally, (size, depth, shape, etc.), or only in where they are positioned in the pattern. The elements are being claimed in terms of how they interact with stresses, however, the claim does not recite what the stresses are, i.e., from what direction, what force., etc. Are they stresses which occur during use and if so, are they all stresses which occur during use or just certain stresses or from certain directions. In other words, does the bond pattern respond to any stress from any direction or does it respond to stress from a certain direction, i.e., from above, or

below, or stress which presses the two layers together, or stress which pushes on the layers from the edges in a direction perpendicular to the face of the layers which comprise the bond pattern. It is not clear how the stress termination elements differ from stress receptor, transfer and dissipation elements? Do they differ structurally from each other or is the difference where they are located within the bond pattern? This problem is also present in other claims. ***Claims merely setting forth physical characteristics desired in an article, and not setting forth specific compositions which would meet such characteristics, are invalid as vague, indefinite, and functional since they cover any conceivable combination of ingredients either presently existing or which might be discovered in the future and which would impart the desired characteristics.*** Thus, the instant limitations are too broad and indefinite since it purports to cover everything which will perform the desired functions regardless of its composition, and, in effect, recites compounds by what it is desired that they do rather than what they are; the expressions also are too broad since it appears to read upon materials that could not possibly be used to accomplish purposes intended. ***Ex parte Slob*** **(PO BdApp) 157 USPQ 172.**

11. **Response to arguments regarding 112 2nd rejections:**

With regard to the various structures of the bond elements such as stress receptor elements, transfer and dissipation elements, etc., Applicant argues that they are exactly as described in the specification and drawings. However, since the elements are described in terms of what they do in response to stress and since the stress is not defined the claims are indefinite. If the elements were defined in terms of shape, size, location, etc., then they would be definite. However, they

are defined by what they do in response to stress and the stress is not defined in the specification. Applicant's caution not to use the terms "embossments or indentations" is well taken. Finally, Applicant again argues that the nature of the stress does not matter, what matters is how the elements operate to share the stress imposed. However, the nature of the stress has to matter because the bond pattern is fixed and it is not seen how a fixed pattern could share vastly different stresses in the same way. Since the elements of the pattern are defined by what they do, the elements would have to do the same things regardless of the stress to which the bond pattern was subjected. The structure of elements which while static and fixed could somehow adapt to vastly different stresses is not clear. Applicant argues that bond elements as described and claimed direct stresses from the side edges of the bond pattern inwardly. However, what about stresses which originate in the center of the bond pattern? How would the stress receptor elements which are located proximate the edges of the bond pattern function as stress receptor elements when the stress is originating in the center? The structure of elements which are capable of doing this is not clearly set forth in the claim. Therefore, this rejection has been maintained. This rejection is applied to all the independent claims currently pending.

Claims 3 and 4 lines 1-2 of text, recite "wherein bonds corresponding to said bond elements are activated". This limitation renders the claims vague and indefinite because it is not clear whether this means that the bond elements are present in a latent, (i.e., non-activated), form and are then activated or if this means that bonds are formed by the application of thermal energy or ultrasonic-frequency energy to the first and second thin-section elements so that bonds are

formed in a pattern wherein the bonds comprise stress receptor elements and transfer and dissipation elements.

12. **Response to arguments:**

In response to this rejection, Applicant asserts that the word "latent" was not defined for Applicant. However, as set forth above, since Applicant is claiming that the bonds are "activated", it is not clear whether this implies that the bond elements in claim 1 are latent, wherein the word latent is given its normal and accepted meaning of not active but potentially active. Thus, the use of the word "latent" implies that there are potential bonds but not actual bonds. If applicant wants to claim that the bond elements are formed by means of thermal bonding, etc., it would more clear if the claims were amended to recite simply that the bond elements are "formed" rather than "activated" since, as set forth above, activation implies that the bonds are present but not active, which is vague and indefinite, in that how can bonds be present and not active?

Claim 7 is rejected under 35 U.S.C. 112 second paragraph. It is not clear what is meant by bond element contact lengths. Does this refer to the length of an individual bond element? This is not clear from the discussion in the specification or from the claim. Claim 7 further defines the composite contact length as the composite of the bond element contact lengths. However, since the meaning of the limitation "bond element contact length" is not clear, the definition of the composite contact length is also not clear. Therefore, claim 7 is indefinite.

13. **Response to argument:**

14. Applicant's amendments have overcome the specific rejections which related to claim 7 alone, other than those which are common to it from claim 1. However, the rejections regarding the "bond element contact length" limitation has been maintained for the reasons set forth in the objections to the drawings. This rejection could be overcome if the language used in the specification and the claims was consistent.

Claims 8 and 9 also refer to the composite contact length, however, as set forth above, this limitation is indefinite.

With regard to claims 14-15 see the rejection of claims 3-4 above.

In claim 24-25, see the rejection of claims 3-4.

With regard to claim 30, see the rejection of claim 1 above. With regard to claims 31-32, see the rejection of claims 3-4 above.

With regard to claim 35, see the rejection of claim 1.

With regard to claim 36, see the rejection of claim 1.

With regard to claim 41, see the rejection of claim 1 and claim 7.

With regard to claim 44, see the rejection of claim 1.

With regard to claims 48-49 see the rejections of claims 3-4.

With regard to claim 63, see the rejection of claim 1.

With regard to claims 67-68, see the rejection of claims 3-4.

With regard to claim 73, see the rejection of claim 63.

With regard to claims 74-75, see the rejections of claims 3-4.

15. For purposes of the art rejection below, if a bond pattern has the claim pattern, the elements which make up the pattern will be presumed to function as stress receptor elements, transfer and dissipation elements, by virtue of their location within the pattern and relative to each other, since the claims as currently presented do not differentiate between the elements in terms of structure.

16. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless -
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

17. Claims 1-6, 30-34, 73-77 are rejected under 35 U.S.C. 102(b) as being anticipated by McCormack et al, WO 99/14415. McCormack et al discloses a bonded composite material which comprises a film layer and a nonwoven layer. The bonded composite material may be employed in absorbent articles such as diapers, etc. The bonded composite material comprises two layers which are bonded together by means of a bond pattern. The bond pattern necessarily comprises a bond length, a bond width and it also comprises a central longitudinal axis. The bond pattern further comprises a plurality of bond elements. The bond elements which are at the perimeter of the bond pattern correspond to the claimed stress receptor elements. The bond elements which are disposed within the perimeter of the bond pattern correspond to the claimed transfer and dissipation elements. The transfer and dissipation elements are closer to the stress receptor elements than the stress receptor elements are to each other. See figures. The bonds may be

formed by the application of thermal energy. The layers may comprise polymeric materials such as polyolefins. See example 1.

18. **Response to arguments:**

19. In response to Applicant arguments, the bond pattern of McCormack does not extend over the entire surface of the bonded composite.

20. Claims which recite bond contact element length have not been included in the art rejection since the structure is so unclear an art rejection can not be made.

21. Claims which recite that the transfer and dissipation elements have legs extending from the respective ends towards each other have not been included in the art rejection because none of the cited art teaches or suggests the claimed structure of the transfer and dissipation elements.

22. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

23. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth M. Cole whose telephone number is (703) 308-0037. The examiner may be reached between 6:30 AM and 5:00 PM Monday through Thursday.

Mr. Terrel Morris, the examiner's supervisor, may be reached at (703) 308-2414.

Inquiries of a general nature may be directed to the Group Receptionist whose telephone number is (703) 308-0661.

The fax number for official faxes is (703) 872-9310. The fax number for official after final faxes is (703) 872-9311. The fax number for unofficial faxes is (703) 305-5436.

Elizabeth M. Cole
Primary Examiner
Art Unit 1771

e.m.c

December 17, 2002